LEE HIOK PING & ORS.

v.

LEE HIOK WOON & LEE HIOK TNG & ORS.

HIGH COURT SINGAPORE
CHAO HICK TIN J
[SUIT NO. 1401 OF 1973 & SUIT NO. 2457 OF 1981]
18 OCTOBER 1988

LEGAL PROFESSION : *Notice of taxation - Bill of costs - Application for order to set aside revised bill - Leave of Court to file another bill for taxation - Review under O. 59 r. 34 of RSC.*

On or about 17 April 1980, a bill of costs was rendered by the applicant's previous solicitors for a lump-sum of $150,177.50 plus $1,322.50 for disbursements. The applicants by a letter of 16 May 1986 stated that they "would like to have the bill taxed by the High Court before we settle it please."

Subsequently, on 24 November 1986, the solicitors put up a revised itemized bill of costs for a total sum of disbursements, for taxation. These was forwarded to the applicants on 5 January 1987 and informed that the second bill would be taxed by the Registrar on 20 January 1987.

The Deputy Registrar was informed of the first bill and he then taxed off $47,409 from the second bill. The applicants were not present.

The applicants' present solicitors, on 18 March 1987, enquired applicants previous solicitors basis on which the letter had put up the second bill for taxation without the applicant's consent and without an order of the Court granting leave to withdraw the first bill.

They further wrote to say that the applicants had requested their previous solicitors to tax the first bill and not any other bill.

The applicant's present solicitors also asked the previous solicitors if they agreed to a re-hearing of the notice of taxation as no Registrar's certificates had been issued yet.

In reply the previous solicitors disagreed but proposed that the applicant's proceed by way of O. 59 r. 34 of the RSC and that they would not object to the application for a review being made out of time.

Held:

[1] A solicitor may, by virtue of s. 117(1) and (3) of the Singapore Legal Profession Act, have his bill taxed only after having obtained an order of Court on a petition, unless there is consent by the solicitor and client that the particular bill be taxed.

[2] Notice of taxation and the bill of costs No. 64/1987 set aside and taxation proceedings declared void.

[Order accordingly.]

Cases referred to:
Siew Kuen Williams v. Yong Siew In [1984] 2 CLJ (Rep) 450
Loveridge v. Botham [1797] 1 Bos & Pul 49
Re Carven [1845] 8 Beav 436
Re Walters [1845] 9 Beav 299
Re Heather [1870] 5 Ch App 694
Re Holroyde & Smith [1881] 43 LT 722
Chappel v. Mehta [1981] 1 All ER 349
Re Tilleard [1863] 32 Beav 467
Re Thompson [1885] 30 Ch D 441
In Re Taxation of Costs In Re Solicitors [1943] 1 KB 69
Re A Solicitor [1943] 1 Ch 48
Harry Wee v. Haw Par [1980] 2 MLJ 8
Re Bill of the Solicitors for the Trustees of the Estate of Syed Ahmad bin Abdulrahman Alsagoff (deceased) [1978] 2 MLJ ixix

Legislation referred to:
Legal Profession Act [Sing], ss. 117(1), (3), 120(3), 123
Rules of the Supreme Court [Sing], O. 59 r. 34

Other source referred to:
Halsbury's Law, Vol. 44

For the 4th, 5th and 6th defendants - Neo
For the Law Society as amicus curae - M Karthigesu

JUDGMENT

Chao Hick Tin JC:

This is an application made by the 4th, 5th and 6th defendants, the applicants in these proceedings, for an order to set aside a notice of taxation and the accompanying bill of costs and the subsequent taxation proceedings. The bill in question (No. 64/1987) is that of Messrs Rodyk and Davidson who were the previous solicitors for the applicants in Suit No. 1401 of 1973 and Suit No. 2457 of 1981.

The undisputed facts are these. On or about 17 April 1986 a bill of costs ("the first bill") was rendered by M/s. Rodyk and Davidson to the applicants for a lump-sum of $150,177.50 plus $1,322.50 for disbursements. The applicants in their letter of 16 May 1986 to Rodyk & Davidson stated that they "would like to have **the bill** taxed by the High Court before we settle it please." (Emphasis added). Subsequently on 24 November 1986, Rodyk and Davidson put up a revised itemized bill of cost ("the second bill") for a total sum of $197,586.50, plus $1,322.50 in respect of disbursements, for taxation. By a letter dated 5 January 1987 Rodyk & Davidson forwarded the second bill to the applicants, who were informed that the second bill would be taxed by the registrar on 20 January 1987 at 10.00 a.m. and that if they needed any advice on the bill to contact Rodyk & Davidson. The second bill was accordingly taxed by the learned Deputy Registrar on 20 January 1987 at which proceedings the applicants were not present. The Deputy Registrar was informed that a first bill for a lump-sum of $150,177.50, plus disbursements, was put up; he then taxed off $47,409 from the second bill.

On 18 March 1987, the present solicitors for the applicants wrote to Rodyk & Davidson enquiring as to the basis on which Rodyk & Davidson had put up the second bill for taxation without the applicants' consent and without an order of Court granting leave to withdraw the first bill. In reply, Rodyk & Davidson stated that the second bill was taxed pursuant to s. 120(3) (now s. 117(3)) of the Legal Profession Act. The present solicitors further wrote on 4 May 1987 to Rodyk & Davidson to stress that the applicants in their letter of 6 May 1986 requested Rodyk & Davidson to tax the first bill and not any other bill. On 11 May 1987, the present solicitors further telexed to state that in the light of the authority reported at [1987] 2 MLJ 1xix, Rodyk & Davidson were not entitled to present the second bill for taxation. Rodyk & Davidson replied by telex on the same date disagreeing with that point of view and stated that the learned Deputy Registrar was aware of the case mentioned.

In a further attempt to resolve the matter, the present solicitors asked Rodyk & Davidson whether they would agree to a rehearing of the notice of taxation since no registrar's certificate had yet been issued. Rodyk & Davidson disagreed but proposed that the applicants proceed by way of a review under O. 59 r. 34 of the RSC and they would not object to the application for a review being made out of time. Thus, this application before me.

Miss Neo for the applicants raised the following points why Rodyk & Davidson are precluded from issuing the second bill:

(i) Rodyk and Davidson are bound by their first bill and may not, without leave of Court, file another bill for taxation;

(ii) For s. 117(3) of the Act to apply, there must be consent from both sides that the particular bill be taxed.

(iii) If Rodyk & Davidson were to have the liberty to submit a fresh bill which was different from the first, it would give rise to undue pressure being exerted on clients to settle the first bill.

Miss Neo also argued that even though the deputy registrar was informed that the first bill was only for a lump-sum of $151,000, the fact that a much higher second bill has been put up has prejudiced the applicants' position. She urged the Court to invoke its inherent jurisdiction to make the order prayed for in this application.

Mr. Govind for Rodyk & Davidson contended that the Court cannot resort to its inherent jurisdiction to set aside the taxation. Any objection should have been taken on the date of the taxation itself. The Deputy Registrar was informed of the amount of the first bill and he duly taxed it down to an amount equivalent to the first bill which the Deputy Registrar found to be fair. What the applicants should have done was to ask for a review under O. 59 r. 34 of the RSC. He also referred to the Malaysian case *Siew Kuen Williams v. Yong Siew* [1984] 2 CLJ (Rep) 450.

In view of the importance of the points raised in this application to the legal profession on a whole, I thought it would be useful to have the views of the Law Society. At the adjourned hearing, Mr. Karthigesu appeared as *Amicus Curae.* I am most grateful for the assistance he has rendered to this Court.

English Common Law Position

At this juncture I will refer briefly to the position in England. Prior to the Solicitor' Remuneration Act General Order 1920 the solicitor was bound by the bill which he had delivered to his client, whether it be a lump-sum bill or an itemised bill. Such a bill could not be withdrawn or altered without the leave of Court and such leave would only be granted where a mistake or omission was proved to the satisfaction of the Court: see *Loveridge v. Botham* [1797] 1 Bos & Pul 49; *Re Carven* [1845] 8 Beav 436; *Re Walters* [1845] 9 Beav 299; *Re Heather* [1870] 5 Ch App 694; and *Re Holroyde & Smith* [1881] 43 LT 722. More recently this rule was applied by the Court of Appeal in *Chappell v. Mehta* [1981] 1 AER 349.

There are, however, two other cases to which special mention should be made: *Re Tilleard* [1863] 32 Beav 467 and *Re Thompson* [1885] 30 Ch D 441. The facts in *Re Tilleard* are these. There a solicitor of a railway company delivered a lump-sum bill for two items: (i) 525 pounds for attendances and correspondences for a period of above one year; and (ii) 525 pounds for travelling and other incidental expenses. Subsequently the solicitor delivered a rider to the bill containing the particulars and charges in detail in respect of the two items. The particulars amounted in the whole to 1,246 pounds, 16s, 11d, of which 789 pounds, 9s, 6d related to the first item and 457 pounds, 7s, 5d to the second. The Court ordered the bill to be taxed and held that the rider formed no part of the bill. In taxing the bill, the Taxing Master received the rider and allowed in respect of the first item the sum of 521 pounds, 9s, 5d. The railway company petitioned for a review of the taxation on the ground that the taxation should have proceeded without regard to the rider. The company argued that to allow the items in the rider to be taxed would be to permit supplementary or new bill to be delivered, which should only be permitted upon a special application for that purpose. Romilly, MR held that it was in order for the Taxing Master to take the rider into consideration. He explained it thus at p. 481 - 2:

> ... it is open to the solicitor who charges such an item to give evidence of what did really occur and how it is made up ... If the question before the Taxing Master had been whether the solicitor was entitled to augment the 500 guineas to 789 pounds, I think he was not at liberty so to do. The solicitor says, 'I claim in respect of this item 500 guineas. You ask for an explanation: you are entitled to one, and this charge of 500 guineas is made up of items in respect of which I insist I was entitled to charge 790 pounds, but I only charge 525 pounds.' He does not alter his bill; the charge is still 525 pounds, and he cannot claim any more than that sum, but he is entitled to take all these items in and have them taxed for the purpose of showing how he makes out that the 500 guineas is due to him. It was the reason why I directed the taxation of this bill, and, if the Taxing Master had allowed more than 500 guineas upon it, I should have held that it was an improper allowance, and I should have disallowed the excess beyond the 500 guineas.

It should be noted that in *Re Tilleard* the rider was given to explain the lump-sum bill tendered, and though the total amount in the rider exceeded the two amounts in the lump-sum bill, the solicitors were claiming only the amount stated in the lump-sum bill.

In *Re Thompson* (*supra*), the solicitors sent a bill to the client and in the forwarding letter mentioned that the bill did not include charges for all matters. The letter also stated that if the bill was paid within eight days it would be in full discharge; otherwise the solicitors would have the liberty to withdraw it. The bill was not so paid and it was withdrawn. Cotton LJ said at p. 448:

> Now it has been well established that when a solicitor sends in his bill, he gives the client to whom he sends it a right to have that bill taxed. That rule was laid down to prevent any attempts being made by solicitors to impose on clients, who did not know what the proper charges were, by sending in a bill which would not stand taxation and then, when taxation was insisted on or threatened, sending in another bill which they knew could stand taxation.

He went on to hold that the condition was not one which ought to be allowed or which a solicitor could impose upon his client; but in an appropriate case a solicitor could reserve to himself the right to withdraw or alter a bill on condition, provided the condition is fully and clearly stated to the client.

Lindley LJ labelled the condition a "catching" but not a "fair" condition. While he accepted that a solicitor could impose a condition in the bill, that condition must be one which was fairly imposed. He held in the circumstances of that case that the bill was not drawn up in good faith.

The Solicitors' Remuneration Act General Order 1920 brought about a change. The 1920 order was replaced by the Solicitors' Remuneration (Gross Sum) Order 1934. The effect of this change was explained by Scott LJ in *In Re Taxation of Costs In Re Solicitors* [1943] 1 KB 69 at 72 as follows:

> The present position is that by the Solicitors' Remuneration (Gross Sum) Order 1934, the remuneration of a solicitor may, at the option of the solicitor, be by a gross sum in lieu of by detailed charges: 'Provided that ... the client may require that a detailed bill of charges shall be delivered and the solicitor shall thereupon comply with the requisition and any bill so delivered shall be subject to taxation ...' *Prima facie*, that means that the taxed detailed bill would take the place of the original bill for a gross sum for all purposes and the solicitor would be entitled to payment of its amount, and that, in my view, is the meaning of the order. That construction is supported by the words which follow: 'as if the provisions of this order with respect to the regulation of remuneration by gross sum had not been made.' In other words, the earlier bill for a gross sum is ruled out for all purposes. I cannot see how the cases which were decided before the making of the Solicitors' Remuneration Act General Order 1920, the predecessor of the order of 1934, can affect the construction of the language used in those orders which seems to me to be clear.

I should also add that Scott LJ and the other two LJJ also cast doubts whether the older authorities, including *Re Tilleard*, was good law.

However, in the more recent case *Chappel v. Mehta* [1981] 1 All ER 349, the Court of Appeal did not appear to disapprove of the older cases and instead applied the judgment in *Re A Solicitor* [1943] 1 Ch 48 where Uthwatt J said:

> there is undoubtedly jurisdiction in the Court to allow a solicitor to withdraw a bill and to deliver a fresh bill. There are old authorities to that effect and recently the Court of Appeal in *Peter Thomas v. Smith* (unreported, 2 May 1932) exercised that power in circumstances which, so far as can be gathered from the only available material, were exceedingly like those of the present. The question whether that power ought to be exercised in any particular case depends on all the circumstances of that case.

Lawton LJ explained the position in this way in *Chappel* at p. 351:

> In general solicitors should deliver bills which are final bills, and they are not usually allowed to amend their bills once they have delivered them. This is in the interests of the clients, and the Courts have always taken a strict view about solicitors to withdraw their bills. It is for the Court to decide whether special circumstances arise. If the solicitors have acted honestly then maybe they should be allowed to have their original bills withdrawn.

Position in Singapore

Mr. Karthigesu in his submission contended that what applies in Singapore is the pre-1920 English position. He argued that in relation to the present case Rodyk & Davidson were not entitled to withdraw the first bill and substitute in its place the second bill. What Rodyk & Davidson should have done was to itemise the first bill and that bill should be the one to be taxed. He also submitted that the Deputy Registrar by taxing off the difference between the first bill and the second bill, did tax neither.

Under the Legal Profession Act, it is clear that in respect of both contentious and non-contentious work, the solicitor and client can agree as to costs: see ss. 106 and 108 of the Act. Where there is no agreement on costs, the Act does not expressly provide whether the solicitor has the option to deliver a lump-sum bill or must every bill be itemised. The case *Harry Wee v. Haw Par* [1980] 2 MLJ 8 seems to imply that a solicitor could deliver a lump-sum bill.

As Rodyk & Davidson relied upon s. 117(3) of the Act to have the second bill taxed, it may be useful for me to set out the relevant provisions of s. 117:

> Section 117(1) An order for the taxation of a bill of costs delivered by any solicitor may be obtained on a petition of course by the party chargeable therewith, or by any person liable to pay the bill either to the party chargeable or to the solicitor, at anytime within one year from the delivery of the bill, or, by the solicitor, after the expiry of one calender month and within one year from the delivery of the bill.
>
> (2) ...
>
> (3) In any case where a solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

A case which is similar to the present is *Re Bill of the Solicitors for the Trustees of the Estate of Syed Ahmad bin Abdulrahman Alsagoff (deceased)* [1978] 2 MLJ ixix mentioned above. There the solicitors sent a lump-sum bill for $125,000 as costs, plus $9,142.25 as disbursements. Following the clients' request to submit the bill for taxation, the solicitors requested their clients to return the bill for cancellation and reserved the right to submit a fresh bill for taxation at a greater amount. On the return of the lump-sum bill, the solicitors sent the clients a second bill for $167,125 plus disbursements, which bill was submitted for taxation. The learned Deputy Registrar ruled that the solicitors were bound by the first bill, which could only be withdrawn with leave of the Court. The solicitors appealed. The honourable Chief Justice dismissed the appeal and directed that "no more than the original lump-sum bill was to be allowed on taxation."

The Malaysian case of *Siew Kuen Williams* relied upon by Rodyk & Davidson must be viewed in the light of the express provisions in the Malaysian Legal Profession Act which are similar in terms to the Solicitors' Remuneration (Gross Sum) Order 1934 and which read:

> Section 121(1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to s. 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:
>
> Provided that :
>
> (a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him in lieu of the cost a bill containing detailed items, and the gross sum bill shall thereupon, be of no effect;
>
> (b) ....
>
> (c) if a gross sum bill is referred to taxation, whether under this section otherwise, nothing in this section shall prejudice any rules of Court with respect of taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require. (emphasis added).

There, Siti Norma Yaakob J ruled that in view of the words "the gross sum bill shall thereupon be of no effect", the advocate could present an itemised bill in excess of the amount stated in the gross sum bill. She relied upon *In Re Taxation of Costs, In Re Solicitors* [1943] 1 KB 69.

It is clear from s. 117(1) and (3) of our Legal Profession Act that a solicitor may only have his bill taxed after having obtained an order of Court on a petition, unless there is consent by the solicitor and client that the particular bill be taxed. In this case, in their letter of 16 May 1986, the applicants expressly asked that the first bill be taxed. They did not ask for a fresh bill. Therefore there was no consent by the applicants to the second bill being taxed. Admittedly s. 123 of the Act provides that a bill of costs for taxation as between solicitor and client "shall be drawn in the manner provided by the rules of the Supreme Court," which in effect means that is should be itemised. But I do not think it can be argued that by requesting the first bill to be taxed, the applicants have therefore consented to a fresh bill being drawn up for a substantially increased amount. I accept the submission of Mr. Karthigesu that what should have been done by Rodyk & Davidson was to have the first bill itemised and not draw up a fresh bill for a substantially different sum. That should suffice to dispose of this application in favour of the applicants.

I will deal next with the more general question whether Rodyk & Davidson were entitled to substitute a fresh bill in place of the one tendered without leave of Court. Obviously, if there was an agreement between the parties that could be done. But here there was no agreement of the clients. Notwithstanding the doubts cast by the Court of Appeal (clearly *obiter*) in *Re Taxation of Costs, In Re Solicitors* [1943] 1 KB 69, on the older

authorities, I tend to think that those authorities are still good law. It is true that in the older authorities the mischief that the Court had to deal with was the situation of a solicitor who put up a high bill and when contested subsequently submitted a lower bill in order to avoid having to bear the costs of taxation under the one-fifth rule: see footnote 2 to para. 174 *Halsbury's Law*, Vol. 44. This aspect was alluded to by Jessel MR in *Holroyde v. Smith* (*supra*) at p. 723 as follows:

> Now that is exactly what he cannot do. He cannot, to adopt an expression used by a Counsel 'try it on'. If he puts in items which he is not entitled to charge, but which depend on a client's liberality, it is not open to him to afterwards withdraw the charges if objected to and send in another bill. The law does not permit that.

The fact-situation in our present case is admittedly in the reverse. Here the second bill put up is substantially more than the first bill. The objection to such a practice should be obvious. To allow a solicitor to freely substitute a bill would encourage pressure being brought to bear on the client to accept the first bill which the client has asked to be taxed in the first place. Lest it be averred that the present case is similar to *Re Tilleard* let me say straightaway it clearly is not. I expect every solicitor, before submitting his bill to a client, to carefully scrutinize the amount of work he has put in for that client and make his claim accordingly. And he should and must be able to justify it when called upon to do so. In my view the rationale of the earlier authorities is just as valid for the fact-situation in the present case. To countenance otherwise would mean that the Courts do encourage solicitors to bargain with clients and to put pressure on clients to accept the amount a solicitor would charge. It could open the door to the most undesirable or irresponsible kind of conduct and undermine the public's confidence in the integrity of the profession. In the absence of the statutory provisions approving such a practice, I am not inclined to sanction it. This is an honourable profession and must be seen to be so.

I am not for a moment suggesting that Rodyk & Davidson had any dishonourable intention in making the substitution. But as Rodyk & Davidson have not applied or obtained leave of Court to withdraw their first bill, they are not at liberty to do so. I should add that the first bill was not tendered as a conditional bill either.

I recognise that it is a fairly common practice in the profession for a solicitor to send a lump-sum bill based upon a very rough estimate, without going too much into details. But if a solicitor should wish to reserve to himself a right to withdraw the bill in the event that the client should ask him to submit the bill for taxation, it seems to me only fair that he should at the time of the submission of the bill make this point very clear to the client including the basis upon which the lump-sum bill was drawn. The client should also be advised that if the bill was not accepted and a detailed bill had to be drawn up for taxation, it could very well be for a larger amount than the amount claimed in the lump-sum bill.

There is one other point raised by Mr. Karthigesu - that the Deputy Registrar by merely deducting the difference between the first and the second bills did not tax any bill. I agree with this submission. The Deputy Registrar should have taxed the second bill without being restrained by the lump-sum claimed in the first bill. Rodyk & Davidson should have been required to justify all the items of claim. No such exercise was carried out. In my view, the taxation was no taxation at all.

For the above reasons, I would, in exercise of the inherent jurisdiction of this Court, set aside the notice of taxation and the bill of costs No. 64/1987 and declare the taxation proceedings void. Rodyk & Davidson raised the issue of estoppel based on the failure on the part of the applicants to attend the taxation on 20 January 1987. They relied on s. 117 of the Evidence Act. I do not think estoppel applies in the circumstances of this case.

Notice of taxation 2 bill of costs set aside taxation proceeding declared void.

Also found at [1989] 1 CLJ 297